APPEAL NO. 93171

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). At a contested case hearing held in (city), Texas, on February 11, 1993, the hearing officer, (hearing officer), determined that respondent (claimant) sustained a compensable injury in the course and scope of her employment with the (employer) on or about (date of injury), that she gave timely notice of her injury to the employer, and that she has had disability as a result of her compensable injury since February 17, 1992. Appellant (carrier) challenges the sufficiency of the evidence to support the hearing officer's finding that claimant suffered a mild bilateral carpal tunnel syndrome (CTS) as a result of repetitive activity performed in the furtherance of the interests of the employer. Appellant further challenges the sufficiency of the evidence to support the hearing officer's determinations of the timely notice and disability issues. In her response, claimant asserts that if the carrier's post-hearing payment of benefits does not indicate acceptance of the hearing officer's decision, then she opposes the carrier's challenges on appeal.

DECISION

Finding the evidence sufficient to support the challenged findings, we affirm.

Claimant, the sole witness, testified that she had worked for employer for six years as the head meat cook, which involved lifting heavy boxes of meat weighing approximately 50 pounds from the freezer into the "walk-in" to thaw for cooking, and lifting heavy pans of meat during the cooking process. On (date of injury), claimant was lifting meat in long pans weighing about 50 pounds when she felt a sharp pain in her hands "like something tore loose in [her] fingers." She had not felt such pain previously. She immediately told her supervisor, (Ms. T), about it but the latter merely replied, "you'll be all right," and "maybe it will go away," and did not refer claimant for medical treatment. Claimant said she did not know her employer was covered by workers' compensation insurance but she nevertheless continued to tell Ms. T repeatedly on work days following December 10th that her hands were getting worse and that she couldn't do the lifting. She said she missed work on several occasions after December 10th because of her injury and told Ms. T the reason for not coming to work. She also testified that after December 10th, Ms. T then did the heavy lifting but still took no action to refer claimant for medical treatment. Claimant said she also told the school superintendent, Mr. L, on several occasions about the pain in her hands and that it was caused by her work.

Claimant finally sought medical treatment in February 1992. When she returned to work with a medical release restricting her lifting to 10 pounds, which she gave to Ms. T, she was advised that employer had no such work for her. Claimant said she did not work after that time, February 17, 1992, because employer had no work for her given her limitations, and because of the pain in her hands. Finally, in July 1992, claimant submitted her resignation because employer had no work for her and she felt she could not work any more. She said she cannot work, or even drive a car, because of the pain in her hands, which she

said goes up from her wrists into her biceps, and that she last saw a doctor about her condition in May 1992.

Claimant obtained treatment at a state university clinic but said she could not obtain copies of all her medical records because of the expense. She introduced an invoice reflecting a visit on February 7, 1992, and a diagnosis of CTS, a return to work slip dated March 16th which restricted her lifting to 10 pounds and limited repetitious activities to not more than one hour, and records of a May 18, 1992 visit reflecting that she has mild CTS and is doing well with wrist splints.

The carrier's evidence consisted of a radiology report of February 19, 1992, showing mild osteoporosis in both wrists with no bone or joint abnormality, a normal nerve conduction study of February 19, 1992, an Employer's First Report of Injury or Illness, dated July 24, 1992, stating that claimant did not report an injury and that employer's first knowledge was reading from an attached medical report (which was not attached), and a copy of claimant's resignation letter of July 13, 1992, in which she stated she could no longer do her work because of her medical condition.

The claimant had the burden to prove she sustained a compensable injury (Article 8308-1.03(10)), that she timely reported such injury to employer (Article 8308-5.01), and that she has disability as a result of such injury (Article 8308-1.03(16)). The hearing officer found that claimant had a mild bilateral CTS, that she suffered such injury as the result of repetitive activity performed in furtherance of her employer's interest (Article 8308-1.03(39)), that she first became aware of such injury when she experienced excruciating pain in her hands and arms on (date of injury), that she reported such injury to her supervisor, Ms. T, that same day, and that as a result of such injury claimant had been unable since February 17, 1992, to obtain or retain employment at her preinjury wages.

We agree with the hearing officer that claimant met her burden of proof on the three disputed issues. Though claimant could establish her injury through her testimony alone, her testimony was corroborated with medical evidence that she indeed had CTS. Her testimony was unrefuted that she had done heavy lifting on the job for her employer for six years and that she experienced the sharp pains on (date of injury) which ultimately forced her to seek medical attention resulting in the CTS diagnosis. Similarly unrefuted was claimant's testimony that she reported her injury to her immediate supervisor on December 10th and frequently thereafter, and that she could not work after February 17, 1992 because of the pain in her hands.

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-

Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge